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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 459

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, *Petitioner*

v.

FEDERAL POWER COMMISSION, ET AL., *Respondents*

No. 473

THE UNITED GAS IMPROVEMENT COMPANY, *Petitioner*
PHILADELPHIA ELECTRIC COMPANY, *Petitioner*

v.

FEDERAL POWER COMMISSION, ET AL., *Respondents*

Brief of Pan American Petroleum Corporation, The Atlantic Refining Company, Cities Service Production Company, Humble Oil and Refining Company, The Ohio Oil Company, Continental Oil Company, Socony Mobil Oil Company, Inc. (Successor by Merger to Magnolia Petroleum Company), The Pure Oil Company, Union Oil Company of California, W. H. Hunt, Trustee for Hassie Hunt Trust and Phillips Petroleum Company, Respondents, in Opposition to Petitions for A Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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OPINIONS BELOW

The orders of the Federal Power Commission (R. 481-556, 602-610) are reported at 20 F.P.C. 264 and

571.[1] The majority opinion of the Court of Appeals for the Third Circuit and the dissenting opinion (Pet., Public Service Commission of the State of New York, App. A-1-A-8;[1] Pet., The United Gas Improvement Company and Philadelphia Electric Company, pp. 18-25)[2] are reported at 269 F. 2d 865.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petitions filed herein.

QUESTION PRESENTED

The evidence of record in a proceeding before the Federal Power Commission under Sections 7(c) and (e) of the Natural Gas Act established, *inter alia*, (a) an urgent need of distribution company customers of Transcontinental Gas Pipe Line Corporation for additional direct daily deliveries of 173,634 Mcf and additional daily deliveries from storage of 191,000 Mcf; (b) savings of millions of dollars which will accrue to ultimate consumers, occasioned by reduction of operating costs due solely to additional supplies of natural gas proposed to be sold by independent gas producers to Transcontinental; and (c) that no new pricing pattern or plateau would be established by the proposed prices in the producer sales contracts. The Federal Power Commission issued Certificates of Public Convenience and Necessity to the producers authorizing sales of natural gas to Transcontinental at agreed-

[1] Reference to the Petition of Public Service Commission of the State of New York will be as follows: (Pet. N.Y., p.).

[2] Reference to the Petition of the United Gas Improvement Company and Philadelphia Electric Company will be as follows: (Pet. UGI, p.).

upon contract prices. The question presented is whether the court below properly held that, in the circumstances presented, the Commission did not err as a matter of law in issuing such Certificates.

STATUTE INVOLVED

The applicable portions of the Natural Gas Act, 52 Stat. 821 (1938), as amended by 56 Stat. 83 (1942), 15 USC §§ 717-717w, are set forth at pages 28 through 34 in the Appendix to the Petition of The United Gas Improvement Company and Philadelphia Electric Company.

STATEMENT

Review is sought of the judgment of the Court of Appeals for the Third Circuit, affirming an Opinion and Order of the Federal Power Commission (Commission), which issued to Transcontinental Gas Pipe Line Corporation (Transcontinental) and to independent producers Certificates of Public Convenience and Necessity authorizing the sale of natural gas to Transcontinental, without attaching to the producer certificates a condition with respect to the initial prices to be charged.

Transcontinental, which owns and operates a natural gas pipeline system extending from Texas to New York, filed applications to effect its largest expansion program, estimated to cost in excess of $167,000,000. Distribution company customers of Transcontinental were to be supplied an additional 173,634 Mcf of natural gas daily and ten existing customers were to receive an additional 191,000 Mcf of natural gas daily from storage facilities. The proposed source of the natural gas to supply such increased deliveries was under sales

contracts of 26 independent producers, all of whom filed appropriate applications for certificates to effect such sales. The total volumes of natural gas proposed to be sold to Transcontinental pursuant to such contracts were approximately two trillion cubic feet (2,000,000,000,000 cubic feet), to be produced and sold from newly developed leases in south Louisiana and adjacent offshore areas.

The pipeline and producer applications were initially set for a consolidated hearing. Subsequent to presentation by Transcontinental of its direct case, the Commission, on March 28, 1958, upon motion of Transcontinental, which was unopposed by any participant or intervenor, severed the independent producer applications and fixed a separate date for hearing such applications (R. 372-382) before the same Presiding Examiner. Petitioners participated in all hearings. Subsequently, as Commission Regulations advise participants (18 C.F.R. 157.23(b)), the Commission considered the entire record in these inter-related proceedings and entered its single Opinion and Order based thereon.

Witnesses for Philadelphia Electric Company (Philadelphia), The United Gas Improvement Company (UGI),[3] Long Island Lighting Company (Long Island), Brooklyn Union Gas Company (Brooklyn Union) and Brooklyn Borough Gas Company (Brooklyn Borough)[4] testified as to their requirements for additional natural gas and described savings to be

[3] Philadelphia and UGI are Petitioners in No. 473.

[4] Long Island, Brooklyn Union and Brooklyn Borough are distribution companies whose rates are regulated by the Public Service Commission of the State of New York. Petitioner in No. 459.

achieved through reduction in costs that would accrue to them and to their consumers if the certificates were granted and the additional natural gas made available to them. The savings to which these witnesses testified would exceed $11,000,000 per year by 1962, and, cumulatively, amount to more than $30,000,000 through 1962 (R. 613, 226; 228-229, 236-241, 256-257).[3] Other distribution companies and municipalities presented witnesses who testified as to their additional gas requirements (R. 227-228, 232, 234-236, 240-241, 243-246, 248-250, 254, 258, 260-261). Alternative sources were available to satisfy these additional requirements, but the proposal involved in these proceedings was the most economical means of meeting such requirements.

The producers and Transcontinental had entered into long term contracts of 20 years or more at initial prices ranging from 21 cents to 22 cents per Mcf, exclusive of tax reimbursement, if any (R. 302-303). Transcontinental was not under any compulsion to purchase this gas (R. 118-119) and could have purchased its gas requirements elsewhere upon terms less favorable to the ultimate consumer (R. 13-14). The prices provided in the contracts were not out of line with the prices under other contracts in the areas (R. 13-15, 77, 79, 116-118), and were substantially lower than for sales under comparable intrastate con-

[3] Philadelphia would effect a reduction in costs of $2,454,581 by the end of 1959 (R. 240-241). UGI would save $262,000 in fiscal year 1959-1960 (R. 256). Brooklyn Union would save $682,965 in 1959, $3,218,704 in 1960, $5,798,639 in 1961 and $7,552,756 in 1962 (R. 613, 229). Brooklyn Borough would save $39,000 by 1962 (R. 228). Long Island, which proposed to secure an additional 25,000 Mcf of firm gas per day, will save $29,000 per year for each additional 1,000 Mcf of firm gas it purchases from Transcontinental (R. 237).

tracts in the area (R. 128-129). There was no corporate affiliation between buyer and any seller and negotiations were conducted at arm's-length, without any duress or undue influence, each party standing upon the strict letter of his rights. The applicants were willing and able to perform the acts proposed and to conform to the provisions of the Act and the requirements, rules and regulations of the Commission thereunder (R. 29-39, 41-42, 43-50, 56, 64, 77, 82, 92-93, 96, 101, 104-105, 107-111).

New York, Philadelphia, UGI, and the other intervenors did not present any evidence in the proceedings except as noted above. This uncontradicted evidence reflects solely the benefits that would accrue to them and to consumers. Petitioners before this Court, thus admit the urgent need of the distribution company customers of Transcontinental for additional gas supplies and that millions of dollars will be saved for the benefit of ultimate consumers by reduction of operating costs, due solely to use in the respective distribution systems of the additional natural gas proposed to be purchased by Transcontinental.

Upon consideration of the entire record, the Commission, on September 4, 1958, entered its Opinion and Order issuing certificates to the producers without conditions as to price and, in a lengthy decision, set forth its findings, reasoning, and conclusions (R. 481-524). The Commission, by a 4-1 vote, denied petitions for rehearing (R. 602-610).

Upon review, the court below, after consideration of briefs, oral argument, supplemental briefs and a memorandum concerning the Opinion of this Court in *The Atlantic Refining Company, et al.* v. *Public Service*

Commission of the State of New York, et al., 360 U.S. 378 (1959),[6] held that the Opinion and Order of the Commission reflected consideration of all of the elements necessary under Sections 7(c) and (e) of the Natural Gas Act to proper disposition of the applications and that there was substantial evidence to support the findings and conclusions of the Commission (Pet. N.Y., App. A-7).

Having reviewed the entire record and "with the text of the Supreme Court opinion" before it, the court held that the "weighing of the factors and the conclusion to be reached is a task for the Commission," that the necessary elements had been considered by the Commission, and, that the conclusion reached by the Commission was "not unreasonable." Judgment was, accordingly, entered affirming the Opinion and Order of the Commission. Circuit Judge Hastie, not challenging the correctness of the result reached by the Commission, would, nevertheless, have remanded the proceeding to the Commission for reconsideration in light of the Opinion of this Court in CATCO.

Petitions for Rehearing filed by Petitioners were considered by Judges Goodrich, Kalodner, Staley and Hastie, a majority of the judges for the Third Circuit and all of the judges who sat in CATCO and in this case. The Petitions for Rehearing were denied unanimously.

ARGUMENT

There is no necessity or occasion for this Court to review the judgment of the court below. The court adhered strictly to well-settled principles of court agency relationship; it analyzed the record before

[6] Hereafter referred to as "CATCO"

the Commission; it reviewed the action of the Commission in light of established principles of law; and, particularly important here, it made such review and analysis in light of this Court's Decision in CATCO, and found the Commission Opinion and Order to be in accord with all requirements of Section 7 of the Act and the substantial evidence rule.

The court, in its opinion below, said:

> "Since the case was submitted to this Court the Supreme Court has affirmed us in a case referred to by the parties as 'CATCO'. *We proceed in this case, therefore, with the text of the Supreme Court opinion before us.* The Court affirmed the Third Circuit in sending that case back to the Commission for further hearing. The grounds upon which the majority rested its decision differed from those relied upon by this Court and *we shall, of course, keep our eye on the Supreme Court opinion rather than our own.*" (Pet. N.Y., App. pp. A-3, 4) (Emphasis added, footnotes omitted).

Unlike the court, Petitioners misread the holding and misinterpret the language of this Court in CATCO. Petitioners ignore this Court's clear pronouncement regarding the relationship of the "just and reasonable" rate standard of Sections 4 and 5 and the "public convenience and necessity" standard of Section 7. Petitioners recognize that this Court determined that the evidence of record in CATCO did not satisfy the requirement for "substantial evidence" to support the specific findings and conclusions of the Commission in that case. Petitioners, however, erroneously assert that this Court also held that, as a matter of law, the sales there involved could never be certificated without a condition as to price in any proceeding under Sections 7(c) and (e).

Inherent in Petitioners' argument is the erroneous assumption that, as a matter of law, any other sale, in any other field, regardless of the circumstances, based upon a contract providing for a price as high as or higher than that involved in CATCO could never be certificated without a condition as to price being imposed. Under this reasoning, administrative discretion and the Commission's statutory functions under Section 7 must disappear, and a specific price in cents (¢) per Mcf becomes for all time the only price that, as a matter of law, meets the requirements of public convenience and necessity. Obviously, such assumption is contrary to law.

The court below correctly read CATCO. The court concluded that, unlike CATCO, the evidence in this case was sufficient to prove that the prices involved were not "out of line," and that the Commission had so found. The court concluded, from an examination of the evidence, that "these new prices do not establish 'a new price plateau in the southern Louisiana shopping area' ", and that, "There can be little doubt that the Transco contract prices actually represent the market price for natural gas in the area." The same conclusion had been reached by the Examiner (R. 417) and by the Commission (R. 489). The court also considered whether, under the criteria of Section 7, certification would have any adverse effect upon consumers. It concluded, as had the Commission (R. 495), that the effects would be beneficial (Pet. N.Y., p. A 6). Any other conclusion could not be reached in view of the millions of dollars in savings that would accrue as a direct result of the increased supply of natural gas to Transco's customers and to the consumers they serve. The court further concluded, "Finally, there

was evidence in this case that the increased supply of natural gas would effect cost savings to Transco's customers who otherwise would be required to manufacture gas themselves at a higher unit cost in order to satisfy expanding consumer demand for gas."[7]

Thus, the court below, fully cognizant of the Opinion in CATCO, reviewed the action of the Commission and the entire record upon which the Commission's Opinion and Order was based. After a careful review of the principles of law which the Commission had followed, buttressed by searching appraisal of the Opinion in CATCO, the court properly held that, as a matter of law, issuance of the certificates to the producers without a condition as to price was not unreasonable. Consistent with its functions under Section 19(b) of the Act, the court concluded that it could not hold that the evidence of record was insufficient "to support a finding of Public Convenience and Necessity prerequisite to the issuance of the permanent certificates." Cf. CATCO, 360 U.S. at 393-4.

The case, thus, raises no questions of interpretation of Section 7 of the Act that have not been decided uniformly by the courts of appeals and this Court, and there is no occasion for delay of finality of certification of this project for further weighing of voluminous evidence already carefully considered by the Commission and the court below.

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[7] New York cannot ignore this tremendous cost saving, nor eliminate from the record the probative and entirely voluntary evidence of distribution company customers (many of whom are subject to New York's regulatory jurisdiction) of the substantial benefits that would inure to them; which was offered by them for the purpose of urging certification.

I

The court below correctly interpreted the CATCO Opinion and correctly concluded that the Commission considered all factors and that the evidence supports its findings and conclusions.

An examination of the opinion of the court below emphasizes the care with which that court kept its "eye" on CATCO.

The court recognized that the Act does not require determination of a "just and reasonable" rate in a Section 7(c) proceeding. The Court of Appeals for the District of Columbia Circuit had held in *Oklahoma Natural Gas Co.* v. *FPC*, 257 F. 2d 634 (D.C. Cir. 1958) on May 22, 1958, more than three months prior to the Commission Opinion and Order in these proceedings, and, as this Court later held in CATCO, that a "just and reasonable" hearing, as is contemplated by Sections 4 and 5 of the Act, is not a prerequisite to issuance of a Certificate of Public Convenience and Necessity. The court was also fully cognizant of those factors which this Court stated the Commission should consider in determining public convenience and necessity in proceedings under Sections 7(c) and (e) of the Act.

The main thrust of Petitioners' assertions of error by the court below is that the court "misinterpreted" and "misconstrued" the Opinion of this Court in CATCO. It is Petitioners, however, who not only misinterpret CATCO but also misapply established principles of court-agency relationship. The arguments presented by Petitioners are premised upon many obvious misstatements regarding the action of the court and regarding the evidence of record, most

of which relate only to questions of weight to be accorded various facets of a voluminous record."

Contrary to Petitioners' assertions, the court was aware that, as in any other administrative proceeding, proper and full consideration of *all* factors and evidence of record relative thereto is a vital part of the initial certification process (Pet. N.Y., A-7). Upon examination of the entire record, the court found that the Commission did give consideration to *all* the evidence of record to determine whether, having regard for those factors which necessarily reflect an economic impact upon the consumer, public convenience and necessity required certification of the sales as proposed.

The court below examined the evidence of need that this Court found lacking in CATCO. It pointed out that "Transco's customers called for more gas than Transco was able from its then sources to supply" and said, "That there is a large and immediate need for more gas in the territory served by Transco was fully developed in the testimony and made the subject

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[8] For example, Petitioners erroneously assert that the court below looked only to "need" and "market value" (Pet., UGI, p. 9; Pet., N.Y. p. 13); that the court has left in doubt the scope of the power to attach to a certificate a condition as to price (Pet., UGI, p. 13); that "market prices" have been used as a criterion by which to measure the statutory standard of public convenience and necessity (Pet. UGI, p. 10); that the court has held that where there is "need" arm's-length bargaining is sufficient price justification (Pet. UGI, p. 11); that the court below did not consider the scope and extent of the Commission's authority to issue "conditioned certificates" (Pet. UGI, p. 14); that the court chose to "substitute its judgment" for that of the Commission (Pet. UGI, p. 16); that there is not one word of testimony that a single distribution company would manufacture additional gas in excess of present send outs (Pet. N.Y., p. 19) and, that expansion of service by a distribution company can only result in increases in gas distribution company costs (Pet. N.Y., p. 20).

of findings by the Commission." (Pet. N.Y., A-4). The court then detailed some of the evidence upon which such findings were made. It pointed to the evidence presented by Transco's customers, including Petitioners UGI and Philadelphia, other distribution company customers under the regulatory jurisdiction of Petitioner New York, and others. The court then concluded, "In sum, these gas companies, serving local consumers, attested with facts and figures to the increased consumer demand for gas, their inability to satisfy that demand from existing supplies and the desirability of purchasing increased quantities of natural gas rather than undertaking the more expensive task of expanding facilities and producing manufactured gas." (Pet. N.Y., A-4, 5).

In so concluding, the court below also recognized that the Commission did give consideration to whether the initial contracts will create a new pricing pattern in south Louisiana; whether such initial price will become, in effect, a floor for future gas sales contracts in such area; whether the initial price will cause a general price rise; and whether the initial price will cause an increased price to be paid under the seller's or purchaser's existing contracts. Substantial evidence regarding these factors was shown on the record and fully considered in the Commission Opinion and Order.

This Court has never held, nor has it even suggested, that the Commission or any other administrative agency is to be restricted to an arbitrary consideration of only a portion of the evidence.[9] It has always ad-

[9] To the contrary see *Universal Camera Corp.* v. *NLRB*, 340 U.S. 474 (1951).

hered to the principle of law that an agency is required to consider *all* the evidence adduced of record and to weigh *all* relevant and material factors which pertain to the complex by which the statutory standard of "public convenience and necessity" is measured. Where, as here, the evidence of record, considered in its entirety, establishes, among other advantages, that the proposed sales do not disrupt general price levels and will, in fact, provide substantial financial and economic benefits to ultimate consumers, issuance of certificates as applied for cannot be held to be erroneous as a matter of law.

Petitioners' assertions of error, coupled with alleged "uncertainty" regarding the "relationship between the 'just and reasonable' rate standards of the Act and its certificate provisions," completely disregard the clear and unequivocal language of this Court that: "It is true that the Act does not require a determination of just and reasonable rates in a § 7 proceeding as it does in one under either § 4 or § 5. Nor do we hold that a 'just and reasonable' rate hearing is a prerequisite to the issuance of producer certificates" (360 U.S. at 390-1).

Petitioners this attempt to rely upon an asserted principle of law which has already been passed upon and rejected by this Court in CATCO, and by the Court of Appeals in *Oklahoma Natural Gas Co. v. FPC, supra.*

Petitioners wholly misconceive the law. This Court has *not* undertaken to declare, as a matter of law, a ceiling above which a price is not consistent with the standard of public convenience and necessity. Determination of such administrative conclusion has been

delegated to and is a function of the Commission. When a conclusion made by the Commission is supported by the substantial evidence of record in a given proceeding, Section 19(b) provides that it shall not be set aside.[10]

Petitioners necessarily assume that, when this Court remanded the CATCO certificate proceeding, it prescribed, by judicial decree, a contract price ceiling above which the Commission may *not* certificate a sale by another producer, from another field, to another purchaser, without attaching a condition as to price, regardless of the evidence in the proceeding. Such assumptions are not only contrary to the precise holding of this Court in CATCO, but also are contrary to the entire body of law.

Petitioners and others have also referred to other certificate matters decided by or pending before the Commission.[11] Each of those proceedings necessarily presents widely differing fact patterns. In each of those proceedings the Commission must exercise its statutory function of weighing the evidence and determining whether the proposals meet the public convenience and necessity standard. As participants in these proceedings, Petitioners and others may, of course, urge their views on those matters before the Commission, and, if Petitioners consider themselves aggrieved by a final order of the Commission, they

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[10] *Florida Economic Advisory Council* v. *FPC*, 251 F. 2d 643 (D.C. Cir. 1958), *cert. den.* 356 U.S. 959 (1958); *Michigan Consol. Gas Co.* v. *FPC*, 246 F.2d 904 (3rd Cir. 1957), *cert. den.*, 355 U.S. 894 (1957); *Signal Oil and Gas Co.* v. *FPC*, 238 F. 2d 771 (3rd Cir. 1956), *cert. den.*, 353 U.S. 923 (1957).

[11] See Pet. N.Y., pp. 26-27; Pet. Util. p. 12; Brief Amicus Curiae of Pa. P.U.C., p. 9.

may seek review thereof under Section 19(b) of the Act. Obviously, a myriad of facts is involved in each proceeding, and the instant case cannot be a vehicle for determination of whether various other projects are required by public convenience and necessity; neither can those cases be determinative of the merits of this proceeding. This case was decided and reviewed upon its own merits. Necessarily, each Commission action in the various proceedings cited by Petitioners must be decided upon its own merits.

The court has recognized, as did this Court, that Congress, in the Natural Gas Act, has not proscribed permanent certification without condition merely because there is evidence of increased gas purchase costs, or merely because the proposed price is in excess of a pre-existing contract price to the same purchaser. The Commission is free, as it must be, to consider all facts or factors relevant to determination of public convenience and necessity.[12] What this Court has held is that Congress has proscribed permanent certification where the evidence of record establishes or indicates little more than the sale of natural gas to a pipeline at substantially increased costs to the ultimate consumers. The facts here are to the contrary.

The Opinion below, thus, evidences a proper interpretation of this Court's holding, and, rather than create "uncertainty," is wholly consistent with judicial construction of Section 7 of the Act.

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[12] *The Atlantic Refining Company, et al. v. Public Service Commission of the State of New York, et al.*, 360 U.S. 378 (1959); *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134 (1940); *National Broadcasting Co. v. United States*, 319 U.S. 190 (1943); *National Coal Ass'n v. FPC*, 191 F. 2d 462 (D.C. Cir. 1951).

II

The court below did not depart from established principles of law controlling judicial review of an order of an administrative agency

Petitioners also claim the careful review by the court below was a "significant departure from accepted practice in the field of administrative law." (Pet. UGI, p. 14). But they do not and cannot establish such claim.

At the time the Commission acted, it followed principles of law which had *already* been spelled out clearly in the *Signal* case as to the scope of its authority to condition initial prices under Section 7, and in the *Oklahoma Natural Gas Company* case as to the necessary dichotomy between the public convenience and necessity standard of Section 7 and the "just and reasonable" rate standard of Sections 4 and 5 of the Act. Principles and precedents under the Act, binding upon the Commission, were not left "unsettled" or "uncertain" and were not changed by CATCO. The Commission was fully cognizant of the judicial constructions which had identified guideposts of its area of discretion, and was fully cognizant of the long-settled requirement that substantial evidence must be a foundation for findings and an ultimate conclusion that a project is not required by the public convenience and necessity.

The unreality of Petitioners' characterization of the Commission's actions (Pet. UGI, p. 15; Pet. N.Y., pp. 3-27) is demonstrated by reference to the Commission's opinion. All that Petitioners now allege the Commission failed to consider, *was* carefully consid

ered. Referring to the decisions of the courts,[13] the Commission noted that ". . . the prevalent standard in determining whether a requested authorization should be granted under Section 7(e), is not a rigid absolute of unchanging content, to be mechanically applied regardless of the wide diversity of facts presented by different cases" (R. 487). Unlike the Examiner, the Commission did not view the "price question as 'latent,'" but determined that the "issue" was "presently" before it (R. 489). The Commission then proceeded to review, in detail, the evidence presented. Reference was made to the impracticability of applying "within the confines of a certificate proceeding" a "cost-of-service formula" used under Sections 4 and 5 of the Act. The Commission then considered price levels, price ranges in the area of production, the impact upon the pipeline and ultimate consumers, the supply-demand situation, the peak-day deficiency the pipeline would experience this winter without the new supply, prices of alternative supplies, and the host of other facts adduced in a voluminous record (R. 489-491). Price was, of course, a "consideration of prime importance," and, with ". . . recognition of the rapidly fluctuating factors characteristic of the evolution . . ." of the industry and ". . . of the corresponding requirement that the administrative process" must "possess sufficient flexibility to adjust itself to these factors . . .",[14] the Commission properly exercised its statutory function under Section 7.

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[13] *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134 (1940); *National Broadcasting Co.* v. *United States*, 319 U.S. 190 (1943); *National Coal Ass'n* v. *FPC*, 191 F. 2d 462 (D.C. Cir. 1951); *Scripps-Howard Radio, Inc.* v. *FCC*, 189 F. 2d 677 (D.C. Cir. 1951).

[14] R. 487 (footnote 6).

Upon review, the Court of Appeals exercised its statutory function under Section 19(b) with equal care. The Court referred to the precedents established by the *Signal* and *Oklahoma Natural Gas Company* cases under which the Commission had proceeded. In addition, the court reviewed the Opinion in *CATCO* as it related to the principles of law the Commission had applied. Correctly, as reference to *CATCO* demonstrates, the court concluded that the precedents of *Signal* and *Oklahoma Natural Gas Company* had not been changed.

The court further considered this Court's application in *CATCO* of the "substantial evidence" rule and, this Court's references to the fact pattern which had been before the Commission in the *CATCO* case. With the extensive record, the lengthy Commission findings, and carefully detailed Opinion before it, the court concluded that in this case the Commission had indeed considered "all factors bearing upon the public interest." As in all review of administrative decisions, the court recognized that a *de novo* weighing of these factors and final decision by the court itself as to the public convenience and necessity would be a transgression into the administrative realm. The court found that the Commission had "correctly apprehended and properly applied the law," and, unlike the CATCO situation, its findings and conclusions *were* based upon substantial evidence.

Clearly, the principle of *SEC v. Chenery Corp.*, 332 U.S. 194 (1947), and related cases cited by Petitioners (Pet. UGI, p. 16), has not been violated. The principle of those cases *was* followed, but would have been violated *if* the court had done what Petitioners

seek substituted judgment as to the weight of the evidence,[15] or affirmed the Commission on grounds other than those upon which the Commission had relied.

Finally, Petitioners' suggestion that the court leaves in doubt the scope of the power of the Commission to attach to a certificate a condition as to price is simply contrary to the fact. The court stated, "We have said in the *Signal* case that the Commission could make its certificate conditioned upon a price limitation. We did not say that it must" (Pet. UGI, p. 20). To assure completeness of its analysis of the power of conditioning, and referring to CATCO, the court specifically stated that "We proceed in this case, therefore, with the text of the Supreme Court opinion before us." The scope of the power to condition is set forth at length in the opinion of this Court.

The judgment of the court below, thus, is the result of adherence by it to well-established principles of law. The Court of Appeals properly held that there was substantial evidence to support the findings and conclusions made by the Commission, and upon which it based its Opinion and Order.

The record does reflect that the Commission did, in fact, consider those factors and elements embraced by the Section 7 statutory standard of public convenience and necessity. The court properly refused to determine whether, in all the circumstances, the Commission could have reached some other conclusion or could have

[15] It should be noted that the Petition filed by the Public Service Commission of the State of New York in No. 459, in addition to including matters *de hors* the record, consists almost entirely of argument upon the weight of the evidence. (See N.Y. Pet., pp. 3-4 n. 12, 27).

entered some other order which would have been more satisfactory to Petitioners.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the Court of Appeals does not present any issue of law which merits this Court issuing a writ of certiorari, and that the Petitions for a Writ of Certiorari should be denied.

Respectfully submitted,

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